

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ADAN AND ANA FARIAS

DEFENDANTS

JOHN ASHCROFT, ATTORNEY GENERAL
AND

(b) County of Residence of First Listed Plaintiff TARRANT
(EXCEPT IN U.S. PLAINTIFF CASES)

DISTRICT DIRECTOR, BUREAU OF
IMMIGRATION AND CUSTOMS ENFORCEMENT
County of Residence of First Listed Defendant DALLAS

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

JESUS SAUCEDA, ATTORNEY AT
2565 NE 28th STREET
FORT WORTH, TEXAS 76111
817 740 9996

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ G 1 U.S. Government Plaintiff

☐ G 3 Federal Question
(U.S. Government Not a Party)

☒ G 2 U.S. Government Defendant

☐ G 4 Diversity
(Indicate Citizenship of Parties
in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
and One Box for Defendant)

Citizen of This State ☐ PTF ☐ DEF ☐ G 1 ☐ G 1 Incorporated or Principal Place
of Business In This State ☐ PTF ☐ DEF ☐ G 4 ☐ G 4

Citizen of Another State ☐ G 2 ☐ G 2 Incorporated and Principal Place
of Business In Another State ☐ G 5 ☐ G 5

Citizen or Subject of a Foreign Country ☐ G 3 ☐ G 3 Foreign Nation ☐ G 6 ☐ G 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|---|---|--|--|
| <input type="checkbox"/> G 110 Insurance <input type="checkbox"/> G 120 Marine <input type="checkbox"/> G 130 Miller Act <input type="checkbox"/> G 140 Negotiable Instrument <input type="checkbox"/> G 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> G 151 Medicare Act <input type="checkbox"/> G 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> G 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> G 160 Stockholders' Suits <input type="checkbox"/> G 190 Other Contract <input type="checkbox"/> G 195 Contract Product Liability | <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> G 310 Airplane <input type="checkbox"/> G 315 Airplane Product Liability <input type="checkbox"/> G 320 Assault, Libel & Slander <input type="checkbox"/> G 330 Federal Employers' Liability <input type="checkbox"/> G 340 Marine <input type="checkbox"/> G 345 Marine Product Liability <input type="checkbox"/> G 350 Motor Vehicle <input type="checkbox"/> G 355 Motor Vehicle Product Liability <input type="checkbox"/> G 360 Other Personal Injury <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> G 362 Personal Injury— Med. Malpractice <input type="checkbox"/> G 365 Personal Injury— Product Liability <input type="checkbox"/> G 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> G 370 Other Fraud <input type="checkbox"/> G 371 Truth in Lending <input type="checkbox"/> G 380 Other Personal Property Damage <input type="checkbox"/> G 385 Property Damage Product Liability | <input type="checkbox"/> G 610 Agriculture <input type="checkbox"/> G 620 Other Food & Drug <input type="checkbox"/> G 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> G 630 Liquor Laws <input type="checkbox"/> G 640 R.R. & Truck <input type="checkbox"/> G 650 Airline Regs. <input type="checkbox"/> G 660 Occupational Safety/Health <input type="checkbox"/> G 690 Other <input type="checkbox"/> LABOR <input type="checkbox"/> G 710 Fair Labor Standards Act <input type="checkbox"/> G 720 Labor/Mgmt. Relations <input type="checkbox"/> G 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> G 740 Railway Labor Act <input type="checkbox"/> G 790 Other Labor Litigation <input type="checkbox"/> G 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> G422 Appeal 28 USC 158 <input type="checkbox"/> G423 Withdrawal 28 USC 157 <input type="checkbox"/> PROPERTY RIGHTS <input type="checkbox"/> G820 Copyrights <input type="checkbox"/> G830 Patent <input type="checkbox"/> G840 Trademark <input type="checkbox"/> SOCIAL SECURITY <input type="checkbox"/> G861 HIA (1395ff) <input type="checkbox"/> G862 Black Lung (923) <input type="checkbox"/> G863 DIWC/DIWW (405(g)) <input type="checkbox"/> G864 SSID Title XVI <input type="checkbox"/> G865 RSI (405(g)) <input type="checkbox"/> FEDERAL TAX SUITS <input type="checkbox"/> G870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> G871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> G 400 State Reapportionment <input type="checkbox"/> G 410 Antitrust <input type="checkbox"/> G 430 Banks and Banking <input type="checkbox"/> G 450 Commerce/ICC Rates/etc. <input type="checkbox"/> G 460 Deportation <input type="checkbox"/> G 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> G 810 Selective Service <input type="checkbox"/> G 850 Securities/Commodities/ Exchange <input type="checkbox"/> G 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> G 891 Agricultural Acts <input type="checkbox"/> G 892 Economic Stabilization Act <input type="checkbox"/> G 893 Environmental Matters <input type="checkbox"/> G 894 Energy Allocation Act <input type="checkbox"/> G 895 Freedom of Information Act <input type="checkbox"/> G 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> G 950 Constitutionality of State Statutes <input type="checkbox"/> G 890 Other Statutory Actions |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | | |
| <input type="checkbox"/> G 210 Land Condemnation <input type="checkbox"/> G 220 Foreclosure <input type="checkbox"/> G 230 Rent Lease & Ejectment <input type="checkbox"/> G 240 Torts to Land <input type="checkbox"/> G 245 Tort Product Liability <input type="checkbox"/> G 290 All Other Real Property | <input type="checkbox"/> G 441 Voting <input type="checkbox"/> G 442 Employment <input type="checkbox"/> G 443 Housing/ Accommodations <input type="checkbox"/> G 444 Welfare <input type="checkbox"/> G 440 Other Civil Rights | <input type="checkbox"/> G 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> G 530 General <input type="checkbox"/> G 535 Death Penalty <input type="checkbox"/> G 540 Mandamus & Other <input type="checkbox"/> G 550 Civil Rights <input type="checkbox"/> G 555 Prison Condition | | |

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

☒ G 1 Original Proceeding ☐ G 2 Removed from State Court ☐ G 3 Remanded from Appellate Court ☐ G 4 Reinstated or Reopened ☐ G 5 Transferred from another district (specify) ☐ G 6 Multidistrict Litigation ☐ G 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause
Do not cite jurisdictional statutes unless diversity.)

WRIT IN THE NATURE OF HANDBUS 8 USC §1103(a)

VII. REQUESTED IN COMPLAINT:

☐ G CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ G Yes ☐ G No

VIII. RELATED CASE(S) (See instructions):

IF ANY N/A

JUDGE

DOCKET NUMBER

DATE

9/26/03

SIGNATURE OF ATTORNEY OF RECORD

Jesús Saucedo

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

SEP 26 2003

CLERK, U.S. DISTRICT COURT

By _____ Deputy

Case 8:03
ORIGINAL

JOHN ASHCROFT,
ATTORNEY GENERAL
AND
DISTRICT DIRECTOR
BUREAU OF IMMIGRATION AND
CUSTOMS ENFORCEMENT

A#: 29 247 009

COMES NOW Ana and Adan Farias, Plaintiffs in the above-styled and numbered cause, and for cause of action would show unto the Court the following:

1. This action is brought against the Defendants to compel action on an application for lawful permanent resident status properly filed by the Plaintiff's. The application was filed and remains within the jurisdiction of the Defendants, who have improperly withheld action on said application to Plaintiff's detriment.

PARTIES

2. Plaintiff Ana Farias is a 42 year-old native and citizen of El Salvador. She entered the United States in July 1987 as an illegal alien. Since her arrival in 1987, Plaintiff has been employed. She received initial authorized employment

under Temporary Protected Status under 8 CFR § 244. Since filing for lawful permanent resident status in 1996, she has been employed as authorized by federal regulation. 8 CFR §274a.12 (c)(9)

3. Plaintiff Ana Farias is a 42 year-old native and citizen of El Salvador and the spouse of Adan Farias. She entered the United States as an undocumented alien and accordingly, is entitled to seek lawful permanent resident status as accompanying his wife pursuant to INA §203(d). 8 USC §1153(d) and § 245(i) of the Act.
4. Defendant John Ashcroft is Attorney General of the United States, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department of Justice. 8 USC §1103(a). More specifically, the Attorney General is responsible for the adjudication of applications for adjustment of status filed pursuant to §245 of the Immigration and Nationality Act (INA), 8 USC §1255. The Bureau of Citizenship and Immigration Services is an agency within the Department of Justice to whom the Attorney General's authority has in part been delegated, and is subject to the Attorney General's supervision.
5. Defendant District Director is an official of the Bureau of Immigration and Customs Enforcement (BUREAU) generally charged with supervisory authority over all operations of the BCIS within his/her District with certain specific exceptions not relevant here. 8 CFR §103.1(g)(2)(ii)(B). As will be shown,

Defendant District Director is the official with whom Plaintiffs' application for lawful permanent resident status was properly filed.

JURISDICTION

6. Jurisdiction in this case is proper under 28 USC §§1331 AND 1361, 5 USC §701 *et seq.*, and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

VENUE

7. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant resides and where a substantial part of the events or omissions giving rise to Plaintiff's claim occurred. More specifically, Plaintiffs' application for lawful permanent resident status was properly filed and, to Plaintiffs' knowledge, remains pending with the Dallas BCIS District Director. (See attachment "A").

EXHAUSTION OF REMEDIES

8. Plaintiffs have exhausted their administrative remedies. Plaintiffs have, through their attorney, made numerous inquiries concerning the status of the applications to no avail. (See Attachment "B").

CAUSE OF ACTION

9. Accordingly, Adan Farias petitioned for Plaintiff Ana Farias and was classified as a spouse of a Legal Resident as pursuant to INA §204. Approval of this petition is a prerequisite to the Plaintiff applying for adjustment of status to lawful permanent resident pursuant to INA §245.
10. The I-130 petition filed by Adan Farias was in fact approved by the BUREAU on January 5, 1993. (See attachment "C").
11. All legal prerequisites having been satisfied, Plaintiffs applied for adjustment of status to lawful permanent resident with the Defendant Bureau District Director on December 12, 1996 . At the time of said filing, such applications were being adjudicated by the Defendant District Director in a period of between three and nine months. (See attachment "D").
12. Plaintiffs' applications for adjustment of status has now remained unadjudicated for well over six (6) years.
13. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to applicable requirements. To date, said applications have not been adjudicated.
14. Defendant's refusal to act in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonable, have delayed in and have refused to, adjudicate Plaintiffs' applications for over six years, thereby depriving them of the right to a decision on their status and the peace of mind to which Plaintiffs are entitled.

15. Plaintiffs have been greatly damaged by the failure of Defendants to act in accord with their duties under the law.

(a) Plaintiffs have further been damaged in that their employment authorization is tied to their status as applicants for permanent residency, and is limited to increments not to exceed one year. 8 CFR 274a12(c)(9). Therefore, as in the case of the advanced parole, Plaintiffs have been forced to repeatedly apply (and pay) for extensions of employment authorization, to the continued inconvenience and harassment of Plaintiffs, which is required by law to continually insure her work eligibility. INA §274A(a)(2), 8 USC §1324a(a)(2).

(b) Plaintiffs have further been damaged by simply being deprived of the status of lawful permanent residents during the interminable pendency of their applications.

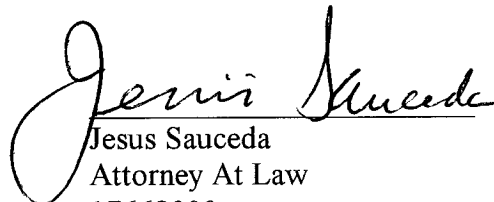
16. The Defendants, in violation of the Administrative procedures Act, 5 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.

17. Plaintiffs have made numerous status inquiries in an attempt to secure adjudication of their applications, all to no avail. Accordingly Plaintiffs have been forced to retain the services of an attorney to pursue the instant action. (See attachment "B").

18. WHEREFORE, in view of the arguments and authority noted herein, Plaintiffs respectfully pray that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

- (a) requiring Defendants to adjudicate Plaintiffs applications for adjustment of status;
- (b) awarding Plaintiffs reasonable attorney's fees; and
- (c) **granting such other relief at law and in equity as justice may require.**

Respectfully submitted,


Jesus Saucedo
Attorney At Law
17668000
2565 N.E. 28th Street
Fort Worth, Texas 76111
817 740 9996

LIST OF ATTACHMENTS

Exhibit Description

- A. I-485 Adjustment of Status with I-485A Applications filed 12/19/96 Attachments: G-325A, Form 9003, Form I-134, copy of spouse's I-551 card, INS I-130 approval notice, copy of I-130 petition (with G325A's, marriage license, copy of I551 card, money order, and G-28).
- B. Inquiries made to US INS.
- C. INS I-797 I-130 Approval Notice.
- D. INS District Office Dallas, Texas 245I receipt.